

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**
1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 55949

Petitioner:

PRESTON M. SMITH AND KAREN MAAS,
v.

Respondent:

**MONTROSE COUNTY BOARD OF
EQUALIZATION.**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on January 27, 2012, James R. Meurer and Amy J. Williams presiding. Petitioners were represented by Mr. Kurt Ulrich and Ms. Sheri Ulrich. Respondent was represented by Ms. Carolyn Clawson, Esq. Petitioners are protesting the 2010 classification of the subject property.

Subject property is described as follows:

**76312 West Black Canyon Road, Crawford, Colorado 81415
Montrose County Schedule No. R0008094**

The subject property consists of two, non-contiguous parcels of land totaling 90.5 acres. The subject is improved with one residence of 1,560 square feet which is located on the larger of the two parcels. Both parcels are identified by the same Montrose County Account Number. A conservation easement was placed on the property December 27, 2006. The conservation easement covers the entire property and identified a 5.20 acre residential building envelope.

Petitioners are requesting an agricultural classification for the entire subject property for tax year 2010. Currently, the Montrose County Assessor has placed a residential classification and resulting value on the residential building envelope with an agricultural classification and corresponding agricultural value being placed on the remaining acreage.

Mr. Kurt Ulrich testified that Section 39-1-102(1.6)(a)(III), C.R.S. is being inappropriately applied by the Montrose County Assessor. Section 39-1-102(1.6)(a)(III), C.R.S. in part states, "Agricultural land under this subparagraph (III) does not include any portion of such land that is

actually used for nonagricultural commercial or residential purposes.” Mr. Ulrich testified that the word “nonagricultural” would reasonably modify both the word commercial and the word residential in the above sentence. Additionally, Mr. Ulrich testified that the fact that this statute was ultimately revised via HB 10-1197 to modify the quoted portion of Section 39-1-102(1.6)(a)(III), C.R.S. further supports his contention. HB 10-1197 modified the language of Section 39-1-102(1.6)(a)(III), C.R.S. as follows, “Agricultural land under this subparagraph (III) does not include any portion of such land that is actually used for nonagricultural commercial or nonagricultural residential purposes.” Mr. Ulrich believes that it was the original intent of the statute to classify all property included in a perpetual conservation easement as agricultural land for property tax purposes, unless portions of the property were being utilized for commercial or residential purposes that were **not** related to the agricultural operation conducted on the property.

Respondent contends that the plain language of Section 39-1-102(1.6)(a)(III), C.R.S. requires those areas specifically identified for residential use within a conservation easement to receive residential classification and a corresponding residential value.

Mr. Brad Hughes, Montrose County Assessor, testified that in 2010, Section 39-1-1-2(1.6)(a)(III), C.R.S. required that any area within a conservation easement identified for commercial or residential uses would necessitate classification and valuation as such, with the remainder of the property within the conservation easement receiving agricultural classification and valuation. Mr. Hughes further testified regarding his use and application of the Assessor Reference Library (ARL). Mr. Hughes stated that he is obligated to follow the ARL and pointed to ARL, Volume 3, page 5.20 directing classification of property under perpetual conservation easement, quoting in part within the list of agricultural classification criteria for this property type, “It does not include any portion of the land used for nonagricultural, commercial, or residential purposes.”

Ms. Joanne Groff, Director, Department of Property Taxation, testified as to the process involved in updating and maintaining the Assessor Reference Library. She testified as to her job duties and her responsibility relative to assisting Assessors and the statewide audit of Assessor’s Offices. She also provided information regarding the effective date of the legislative changes within HB 10-1197, testifying that the statutory changes would go into effect for tax year 2011, not tax year 2010.

Respondent presented sufficient probative evidence and testimony to show that the subject property was correctly classified for tax year 2010.

Language within Section 39-1-102(1.6)(a)(III), C.R.S. defining agricultural classification criteria for property within a perpetual conservation easement states, “Agricultural land under this subparagraph (III) does not include any portion of such land that is actually used for nonagricultural commercial or residential purposes.” Through an extensive review process, Ms. Joanne Groff placed into the Assessor Reference Library directions which Assessors are required to follow. These directions instruct that areas within a conservation easement that are specifically identified for residential or commercial uses receive a residential or commercial classification and value. While Petitioners disagree with the Division of Property Taxation’s interpretation of the statute and direction supplied in the ARL, no compelling witness testimony or evidence was provided to

contradict the direction of the ARL. The conservation easement placed on the subject property has clearly identified a 5.20 acre building envelope which is used for residential purposes. Finally, based upon the testimony supplied, retroactive application of HB-1197 to property tax year 2010 is deemed inappropriate.

ORDER:

The petition is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

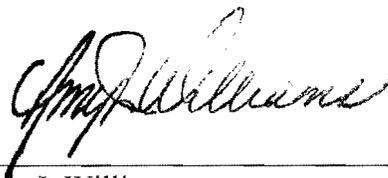
Section 39-8-108(2), C.R.S.

DATED and MAILED this 23rd day of February, 2012.

BOARD OF ASSESSMENT APPEALS

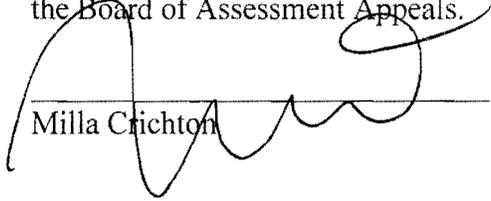


James R. Meurer



Amy J. Williams

I hereby certify that this is a true
and correct copy of the decision of
the Board of Assessment Appeals.



Milla Crichton

